IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA v. ANTHONY ANDREWS, Defendant.	CRIMINAL ACTION NO. 14-0366

OPINION

Slomsky, J. **December 29, 2015**

I. INTRODUCTION

Before the Court is Defendant's Motion to Suppress Physical Evidence and Certain Statements. (Doc. No. 33.) In the Motion, Anthony Andrews ("Defendant") asserts a Fourth Amendment challenge to the search of 4311 Westminster Avenue, where he was arrested on June 17, 2014. The property located at 4311 Westminster Avenue is a residence owned by Defendant's mother, and where Defendant and his girlfriend Shareece Robinson ("Ms. Robinson") resided. Defendant challenges the search warrant as overbroad because it did not identify 4311 Westminster Avenue as a triplex in which there were three separate apartments. He also challenges the duration of the search once the agents should have realized that the residence was a triplex. Defendant seeks the suppression of all evidence seized during the search, and also his statements made after the arrest as the product of the illegal search.

The Government filed a Response in Opposition to the Motion to Suppress (Doc. No. 37), and the Court held a hearing on the Motion on August 3, 2015. Following the hearing, the parties submitted supplemental briefs. (Doc. Nos. 55, 56, 57, 58.) For reasons that follow, the Court finds that the search warrant was valid and the search and seizure was lawful. Moreover,

because the search was lawful, Defendant's statements made after his arrest will not be suppressed. Accordingly, Defendant's Motion to Suppress will be denied in all respects.

II. FACTUAL BACKGROUND

Defendant Anthony Andrews is charged in this case with possession of a firearm by a convicted felon and with being an armed career criminal in violation of 18 U.S.C. §§ 922(g)(1) and 924(e)(1). (Doc. No. 1.) The following events led to the charges filed against Defendant Andrews.

A. The Search Warrant

On June 16, 2014, Special Agent Robert Wescoe ("Agent Wescoe") of the Department of Justice, Bureau of Alcohol, Tobacco, Firearms and Explosives ("ATF") applied for a search warrant to search the residence located at 4311 Westminster Avenue, Philadelphia, Pennsylvania. On the same day, a search warrant was issued by U.S. Magistrate Judge Jacob P. Hart. The search warrant described the place to be searched as follows:

> 4311 Westminster Avenue, Philadelphia, Pennsylvania is a three story single family residential row home. It is a red brick structure with a front porch covered by a green awning. The front porch is elevated, has a wrought iron railing and is painted green. There are five steps with a wrought iron railing leading up to the front porch. The front steps are painted green. The front door is white with red trim. The numbers "4311" are affixed on the front of the structure to the left of the front door. There are two windows with white trim next to the front door. There is also a small yard in the front of the structure that is enclosed by a wrought iron fence that has a small gate. Within this area there are steps leading down to a white door. Next to this white door is a small window with white trim. The second floor has two windows with white trim. The third floor also has two windows with white trim.

(Doc. No. 37, Ex. B.)

The probable cause set forth in Agent Wescoe's Affidavit in support of the Search Warrant is extensive. (Id.) The Affidavit provided probable cause to search 4311 Westminster Avenue for items listed in the search warrant, including but not limited to firearms, ammunition,

and documents and indicia related to proof of residency. (Id.) In the twelve-page Affidavit, Agent Wescoe swore to the following facts.

Agent Wescoe and ATF began investigating Defendant and Ms. Robinson in March 2014. (Doc. No. 37 at 3.) Andrews is a convicted felon who was suspected of possessing firearms purchased by Ms. Robinson at Delaware Valley Sports Center, Inc. ("DVSC"), a Federal Firearms Licensee, located in Philadelphia, Pennsylvania. (Doc. No. 37, Ex. B ¶ 5.)

On March 11, 2014, Agent Wescoe interviewed the owner of DVSC and learned that, in February 2014, DVSC received three firearms via an interstate shipment from a Texas website company, "Cheaper Than Dirt," to be transferred to Ms. Robinson. (Id. ¶¶ 8-9.) On February 22, 2014, Ms. Robinson went to DVSC and completed the required paperwork for transfer of the firearms.[1] (Id. ¶ 11.) A black male was present with Ms. Robinson at DVSC. (Id.)

DVSC transferred the following firearms to Ms. Robinson on February 22, 2014: (1) MPA (Masterpiece Arms), Model MPA57SST, serial number V8817, pistol, caliber 5.7x28; (2) CAI (Century Arms International/Zastava Arms), Model M92PV, serial number M92PV034868, pistol, caliber 7.62x39; and (3) Phoenix Arms, Model HP25A, serial number 4405278, pistol, caliber .25 ACP. (Id. ¶ 15.)

On March 11, 2014, the owner of DVSC also informed Agent Wescoe that DVSC had recently received a fourth firearm from "Cheaper Than Dirt" which was shipped for transfer to Ms. Robinson. (Id. ¶ 16.) The fourth firearm was identified as a MPA (Masterpiece Arms), Model MPA30T, 9mm pistol, serial number B14351, with a six inch threaded barrel, barrel

[1] Federal law requires that purchasers of firearms complete an ATF 4473 Form entitled "Firearms Transaction Record." (Id. ¶ 6.) The ATF 4473 Form requires the purchaser to provide his or her full name, current residence address, and other identifying information. (Id.) On the ATF 4473 Form completed on February 22, 2014, Ms. Robinson represented that her current residence address was 1013 N. Pallas Street, Philadelphia, Pennsylvania and that she was the "actual transferee/buyer of the firearms." (Id. ¶ 12.)

extension, and 30 round ammunition magazine. (Id.) On March 26, 2014, an employee of DVSC advised Agent Wescoe that Ms. Robinson and a black male identified as Defendant had entered DVSC for the purpose of completing the transfer of the fourth firearm to Ms. Robinson. (Id. ¶ 19.) Shortly thereafter, Agent Wescoe and other members of the ATF Task Force established surveillance at DVSC. (Id. ¶ 20.) Ms. Robinson and Defendant exited DVSC, entered the rear of a vehicle parked outside, and drove away. (Id. ¶ 21.) Ms. Robinson was carrying a black plastic shopping bag, which DVSC confirmed contained the MPA 9mm pistol with serial number B14351. (Id. ¶¶ 21, 23.) The vehicle was registered to Horace Andrews with an address at 4309 Westminster Avenue, Philadelphia, Pennsylvania. (Id. ¶ 22.)

Mobile surveillance followed the vehicle, which stopped at 4309 Westminster Avenue, where Defendant and Ms. Robinson exited the vehicle. (Id. ¶ 24.) The agents then observed the following: Defendant and Ms. Robinson entered and exited 4309 Westminster Avenue; Defendant spoke to a male on the front porch of 4321 Westminster Avenue; and Defendant and Ms. Robinson walked around the area. (Id.)

On April 21, 2014, an employee of DVSC advised Agent Wescoe that Ms. Robinson and Defendant were at DVSC using the gun range. (Id. ¶ 25.) Defendant and Ms. Robinson brought three firearms with them to DVSC: an AK pistol, a Masterpiece Arms pistol, and a silver colored handgun of unknown make and model. (Id. ¶ 26.) The probable cause Affidavit notes that these firearms were similar to those previously purchased by Ms. Robinson at DVSC. (Id.) On the DVSC release form, which must be completed before using the gun range, Defendant stated that his address was 7522 Woodcrest Avenue, Philadelphia, Pennsylvania. (Id. ¶ 25.) DVSC told ATF that Defendant and Ms. Robinson left in a silver Lexus sedan with the firearms. (Id. ¶ 27.) ATF surveillance observed a silver Lexus stop in front of 7522 Woodcrest Avenue. (Id. ¶ 28.)

Ms. Robinson was driving and Defendant was in the passenger seat. (Id.) Three individuals exited 7522 Woodcrest Avenue and entered the Lexus. (Id.) The Lexus was then followed onto the 4300 block of Westminster Avenue. (Id. ¶ 29.) Defendant exited the Lexus and entered a house, possibly 4321 Westminster Avenue, with a black bag, and then exited the house without the black bag. (Id. ¶¶ 29-30.) Defendant was observed standing on the corner at the intersection of 43rd Street and Westminster Avenue, and then walking westbound on Westminster Avenue, at which point surveillance was discontinued. (Id. ¶ 31.)

DVSC employees further advised Agent Wescoe that, at the gun range on April 21, 2014, Defendant carried the AK pistol into DVSC, was firing the AK pistol, and was provided a flash suppressor to use after asking for assistance with the weapon. (Id. ¶ 36.) Defendant left with the flash suppressor without paying for it, and was believed to have later called DVSC and said it was in "his" gun box, and that he would return it the next day. (Id.)

On April 22 and 23, 2014, Agent Wescoe spoke with Defendant's parole officer, who informed Agent Wescoe that he believed Defendant's home address was his mother's house at 7522 Woodcrest Avenue, Philadelphia. (Id. ¶ 39.) The parole officer also advised Agent Wescoe that Ms. Robinson was Defendant's girlfriend. (Id.)

On May 13, 15, 20, 22, and 30, 2014, and June 3 and 4, 2014, ATF agents conducted surveillance at 4311 Westminster Avenue.[2] (Id. ¶¶ 41-47.) During surveillance, they observed Defendant and Ms. Robinson entering and leaving the property at all times of day, and sitting on the front steps. (Id.)

[2] It is unclear from the probable cause affidavit what led the agents to focus on surveilling 4311 Westminster Avenue, other than the fact that 4309 Westminster Avenue is apparently next door. Defendant and Ms. Robinson were seen entering and exiting this location. See supra.

On June 5, 2014, Agent Wescoe conducted a search through the "Accurint for Law Enforcement" database of 4311 Westminster Avenue, Philadelphia, Pennsylvania. (Id. ¶ 48.) The search results revealed that Defendant was associated with 4311 Westminster Avenue as of April 2014,[3] and that the property was owned by Defendant's mother, Sheila Andrews. (Id.) ATF concluded that Ms. Robinson and Defendant were residing together at 4311 Westminster Avenue. (Id. ¶ 53.) Agent Wescoe asserted that he believed Defendant was intentionally concealing his true address because he was storing firearms there. (Id. ¶ 57.)

B. The Search

On June 17, 2014, ATF Agents and Task Force Officers executed the search warrant at 4311 Westminster Avenue, Philadelphia, Pennsylvania. (Doc. No. 37 at 10.) Upon entry, the agents encountered Defendant and Ms. Robinson walking out of the second floor rear bedroom. (Id.) The agents conducted a protective sweep of all three floors. (Id.) The agents searched the second floor rear bedroom and recovered the following items which had been transferred to Ms. Robinson by DVSC:

(1) A fully loaded Phoenix Arms pistol, Model HP25A, serial number 4405278, caliber .25 ACP, which was lying on top of a Visa credit card in the name of Anthony Andrews; both were next to the bed;

(2) A MPA, Model MPA57SST, serial number V8817, pistol, caliber 5.7x28; under the bed;

[3] The LexisNexis Accurint for Law Enforcement search result for 4311 Westminster identified Anthony Andrews as one of the persons associated with this address. (Doc. No. 37, Ex. A.) Upon the Court's review of the LexisNexis Accurint for Law Enforcement Exhibit, there are two entries for Anthony Andrews. (Id.) One entry shows 4311 Westminster Avenue along with the dates October 2008 to April 2014. The other entry identifies the following addresses and dates: 7522 Woodcrest Avenue, Philadelphia, January 2013 to April 2014; 7500 Woodcrest Avenue, Philadelphia, Pennsylvania, April 2013 to April 2014; and 4311 Westminster Avenue, March 2014. (Id.) It is unclear which entry supports the statement in the probable cause Affidavit: "Records show this address being associated with Anthony Andrews as of April 2014." (Doc. No. 37, Ex. B ¶ 48.)

(3) A CAI, Model M92PV, serial number M92PV034868, pistol, caliber 7.62x39, with a flash/muzzle suppressor attached to the barrel, and with two fully loaded ammunition magazines; under the bed in a brown cardboard box; and

(4) A MPA, Model MPA30T, 9mm pistol, serial number B14351, along with two fully loaded ammunition magazines; under the bed.

(Doc. No. 37 at 10-11.) In addition, the agents recovered from the second floor rear bedroom mailings to Defendant from "Cheaper Than Dirt" and "KeepShooting.com," including an invoice for the purchase of an ammunition magazine. (Id.) Agents also found, in the second floor rear bedroom, men's clothing and footwear consistent with Defendant's size, a key to the front door at 4311 Westminster Avenue, a men's wristwatch, Defendant's Pennsylvania identification card, a PECO bill in the name of Defendant for 4311 Westminster Avenue, two DVSC shooting range targets containing bullet holes, Defendant's cellphone, and suspected marijuana. (Id.)

Agent Wescoe read Defendant his Miranda rights, which he waived. (Id. at 12.) Defendant told the Agent that he and Ms. Robinson live at 4311 Westminster Avenue and share the second floor rear bedroom. (Id.) Defendant further admitted to going to DVSC with Ms. Robinson and using the DVSC shooting range with firearms Ms. Robinson had purchased. (Id.)

C. Motion to Suppress

On July 16, 2015, Defendant filed the Motion to Suppress Physical Evidence and Statements. (Doc. No. 33.) In the Motion, Defendant argues that the search violated the Fourth Amendment, which requires search warrants to "particularly describ[e] the place to be searched," because the search warrant failed to identify 4311 Westminster Avenue as a triplex with three separate units. (Id. at 8.) Defendant also claims that the good faith exception does not apply because prior to applying for the search warrant and at the early stage of executing the search warrant, the agents should have known that there were three separate units. (Doc. No. 33 at 9-10; Doc. No. 55 at 7-8.) Finally, Defendant argues that any statements he made without Miranda

warnings must be suppressed, and post-Miranda statements must be suppressed as fruit of the poisonous tree.[4] (Doc. No. 33 at 10-12.)

In its response to the Motion, the Government asserts that its agents had no reason to know that the building was being used as a multiple unit dwelling given their extensive surveillance of the property, making the search warrant valid when issued and executed. (Doc. Nos. 37, 56.) Furthermore, the Government claims the good faith exception would apply, and that excluding evidence seized during the search and the subsequent statements of Defendant is therefore not warranted. (Id.) The Government argues that the "fruit of the poisonous tree" doctrine is not applicable to the statements because the search was lawful. (Doc. No. 37 at 28.)

D. The Evidentiary Hearing

On August 3, 2015, an evidentiary hearing was held on the Motion to Suppress. (Doc. Nos. 59, 60.) The following evidence was adduced at the hearing. The Government's evidence consists of the four corners of the Search Warrant and the supporting Affidavit. (Doc. No. 60 at 15-16.) Defendant presented testimony of Defendant's mother, Sheila Andrews ("Ms. Andrews"). Ms. Andrews testified as follows.

On direct examination, Ms. Andrews stated that she has been the owner of the property located at 4311 Westminster Avenue since 1989; the property is zoned as a "multi-family property," and is a "triplex" with "three units." (Doc. No. 59 at 3-4.) Upon entry, there is a hallway, another door, and then a stairway and two doors for the first floor apartment. (Id. at 4-

[4] Although Defendant briefly claims in his initial Motion (Doc. No. 33) that statements taken in violation of the Miranda rule must be suppressed, there is no allegation that the Miranda rule actually was violated, and Defense counsel stated during the evidentiary hearing that the request for suppression of Defendant's statements is limited to a "fruit of the poisonous tree" argument. (Doc. No. 60 at 16.)

5.) There are also three doors on each of the second and third floors, and each floor has its own bathroom and kitchen. (Id. at 5.)

Ms. Andrews said that there are three doorbells on the exterior, "one on top of the other basically on the left side of the door." (Id. at 6.) Defense counsel introduced into evidence as Exhibit D-1 a photograph of the three doorbells. Ms. Andrews testified that the photograph "shows three doorbells on the outside of the door," and that there was a doorbell for each unit. (Id. at 7-8.) Ms. Andrews further said that there are three utility meters located on the exterior of the property "in the back, used to separately bill each unit." (Id. at 8.)

Upon entering the property, there are two doors – the main outside entry door and a second door that is located a few feet into the property. (Id. at 9-10.) There is a sign on the second door that instructs to "keep the door closed at all times." (Id. at 10.) This was the only sign displayed in the interior of the property on the first floor. (Id.) Next, on the left hand wall between the two doors to the first floor unit, there are two electric boxes. (Id. at 11.) Ms. Andrews stated that these boxes are for the second and third floor apartments, and were marked to indicate they are for separate units. (Id.)

According to Ms. Andrews, the property is registered with the Department of License and Inspections, she pays a tax as a landlord, and she pays a commercial garbage removal fee for the building. (Id. at 11-12.)

On cross-examination, Ms. Andrews admitted that the doorbells do not contain any names, numbers, or apartment references. (Id. at 13.) Ms. Andrews testified that there was a satellite dish on the property for many years, but that she was not sure if there was more than one dish at the property. (Id. at 15.) Ms. Andrews also admitted that there was only one mailbox in front of the property, which did not list different names. (Id. at 16.)

Ms. Andrews further conceded that the utility meters were located in the back of the property, and could not be seen from the street. (Id.) In order to see the meters, a person would have to access the alleyway in the back of the property, and that area belongs to the property. (Id.)

Ms. Andrews agreed that the sign reading "keep this door closed at all times" was on the second interior door and could not be seen from the outside if the front door was closed. (Id. at 17.) The two electric boxes that were located inside the property were also behind the second door, and could not been seen if the front door was closed, or even if the front door was open and the second door was closed. (Id. at 18.)

When asked if any tenants other than Defendant and Ms. Robinson were living at the property on June 17, 2014, Ms. Andrews admitted that there were no other tenants living at the property. (Id. at 18.) Ms. Andrews testified as follows:

> Q. Okay. On June 17, 2014, were there other tenants other than your son and Shareece Robinson living in your property?
>
> A. No. My third floor tenant was no longer there.

(Id.)

Ms. Andrews admitted that there was only one front door, which was the "way to go" to gain access to the residence. (Id. at 21.) Access to the property was also possible through the basement. (Id. at 20.) The basement was not a separate unit, and it contained water heaters. (Id.)

On redirect examination, Ms. Andrews said that the basement door looked like a regular door that would open into a room and was visible from the street. (Id. at 21-22.) Additionally, the three water heaters in the basement corresponded to each apartment unit. (Id. at 22.) Ms. Andrews further clarified that the sign stating: "keep this door closed at all times" was located on

the interior of the second door, so it was visible to residents when they came down the stairs. (Id. at 23.)

Defense counsel introduced two additional photographs, marked as Exhibits D-2 and D-3. Exhibit D-2 is a photograph of the side hallway on the first floor between the stairway and the doors to the first floor unit. (Id. at 24.) The photograph depicts the two electrical boxes on the interior wall and a bicycle in the hallway. (Id. at 25.) Ms. Andrews said that the hallway shown was a common area accessible to residents of all units. (Id.) Exhibit D-3 is a close-up photograph of the two electrical boxes on the interior wall. (Id.) Ms. Andrews again said that the boxes were marked as corresponding to the second and third floor units. (Id.)

Ms. Andrews further claimed that the common alleyway behind the property was accessible from a public street, and that the three meters were visible from the alleyway. (Id. at 26.) Ms. Andrews estimated that the alleyway was less than twenty feet from the back of the house where the meters were. (Id. at 27.)

On recross-examination, Ms. Andrews affirmed that the basement water heaters cannot be seen when the basement door is closed, and the basement door is not labeled with any names or apartment numbers. (Id. at 28.) Additionally, Ms. Andrews admitted that vehicles cannot drive down the alleyway behind the property, because it is only approximately three to four feet wide. (Id. at 28-29.) In order to view the meters, therefore, one would have to walk to the back of the property close to the meters. (Id. at 29.) Ms. Andrews confirmed that the meters cannot be seen from the front of the property. (Id. at 29-30.)

Finally, Ms. Andrews clarified that there is only one mail slot at the property, not a mailbox, and that the mail slot does not have any names on it. (Id. at 31.) Moreover, city and public records for the property were made part of the record. (Doc. No. 37, Ex. A.) They show

that the property consists of three separate units. Following the hearing, supplemental briefs were submitted, and now the Motion to Suppress is ripe for a decision.

III. ANALYSIS AND CONCLUSIONS OF LAW

The Fourth Amendment provides: "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized." U.S. Const. amend. IV. "It must always be remembered that what the Constitution forbids is not all searches and seizures, but unreasonable searches and seizures." United States v. Ritter, 416 F.3d 256, 261 (3d Cir. 2005) (quoting Elkins v. United States, 364 U.S. 206, 222 (1960)).

The particularity requirement of the Fourth Amendment not only "prevents general searches, but also 'assures the individual whose property is searched or seized of the lawful authority of the executing officer, his need to search, and the limits of this power to search.'" Id. at 265 (quoting United States v. Chadwick, 433 U.S. 1, 9 (1977)). The "scope of a lawful search is 'defined by the object of the search and the places in which there is probable cause to believe that it may be found'. . ." Maryland v. Garrison, 480 U.S. 79, 84 (1987).

On a motion to suppress, "the burden of proof is on the defendant who seeks to suppress evidence. . . . However, once the defendant has established a basis for this motion . . . the burden shifts to the government to show that the search or seizure was reasonable." United States v. Johnson, 63 F.3d 242, 245 (3d Cir. 1995) (internal citations omitted).

A. The Search Warrant Was Valid

Where there is a multiple unit building, "a warrant authorizing entry into all apartments . . . when probable cause has been shown for the search of only one of them does not satisfy the particularity requirement of the Fourth Amendment." United States v. Busk, 693 F.2d 28 (3d Cir.

1982). In other words, "a search warrant directed against an apartment house will usually be held invalid if it fails to describe the particular apartment to be searched with sufficient definiteness to preclude a search of other units located in the building and occupied by innocent persons." United States v. Bedford, 519 F.2d 650, 654-55 (3d Cir. 1975). On the other hand, a warrant particularly describes the place to be searched "if the description is such that the officer with a search warrant can, with reasonable effort ascertain and identify the place intended." Id. "The standard . . . is one of practical accuracy rather than technical nicety." Id.

When, "with the benefit of hindsight . . . we now know that the description of that place was broader than appropriate because it was based on the mistaken belief that there was only one apartment [at the property], the question is whether that factual mistake invalidated a warrant that undoubtedly would have been valid if it had reflected a completely accurate understanding of the building's floor plan." Garrison, 480 U.S. at 85. In making this determination, the Supreme Court has held:

> [The court] must judge the constitutionality of [police] conduct in light of the information available to [the officers] at the time they acted. . . . Just as the discovery of contraband cannot validate a warrant invalid when issued, so is it equally clear that the discovery of facts demonstrating that a valid warrant was unnecessarily broad does not retroactively invalidate the warrant. The validity of the warrant must be assessed on the basis of the information that the officers disclosed, or had a duty to discover and to disclose, to the issuing Magistrate.

Id. Even if a search warrant "turn[s] out to be ambiguous in scope," it will "nevertheless be upheld against a particularity challenge if the warrant described the structure as it was known or should have been known to the officers after reasonable inquiry under the circumstances." United States v. Ritter, 416 F.3d 256, 266 (3d Cir. 2005) (quoting Garrison, 480 U.S. at 86). "Factors that indicate a separate residence include separate access from the outside, separate doorbells, and separate mailboxes." United States v. Kyles, 40 F. 3d 519, 524 (2d Cir. 1994).

a. Defendant's Arguments

Defendant does not argue that there was no probable cause to issue the search warrant. Instead, Defendant argues that the search warrant and search were overly broad because the search warrant was not limited to the specific unit Defendant resided in. Defendant claims that because 4311 Westminster Avenue is a multiple unit residence, and not a single family residence, the particularity requirement of the Fourth Amendment was violated in describing a place to be searched. Defendant relies on the following arguments to support his claim that it was clear to the agents that the property is a multiple unit dwelling: (1) the city and county public records for the property list it as three separate units; (2) there are three doorbells on the front exterior of the property; (3) upon entry to the property there are two front doors; and (4) there were three separate electric meters in the rear of the property. (Doc. Nos. 55, 58.)

With regard to the property records, Defendant argues that city and county public records reflect that 4311 Westminster Avenue is registered as a three story residential property with three separate residential units. (Id.) Defendant claims that because the Government either knew, or should have known, that the property consisted of three units, its failure to include this information in the search warrant, and to state which unit was to be searched based on the probable cause set forth in the Affidavit of Agent Wescoe, rendered the warrant invalid. Specifically, Defendant argues that the Accurint for Law Enforcement database search yielded fifteen entries that reference "Apartment 1, 2, or 3," or "FL 1" or "FL 2." (Doc. No. 55 at 3.) Defendant also relies on the City of Philadelphia records search conducted by the government for the proposition that the property was converted to three apartments.[5] (Id.) Additionally,

[5] The Court assumes that the City of Philadelphia records check referred to is attached to the Government's Response to the Motion to Suppress at Exhibit A. (Doc. No. 37 at 30-32.)

Defendant argues that the Government should have investigated further records which would have revealed, as Ms. Andrews testified, that she is taxed by the City and County of Philadelphia as a landlord, the property is recorded as a three apartment triplex with the recorder of deeds, and the utilities were separated. (Id.)

Furthermore, Defendant relies on the testimony of Ms. Andrews that there is a front door followed by a short hallway, and then a second entry door containing a sign that reads, "keep this door closed at all times." (Doc. No. 55 at 5.) Defendant argues that this type of sign would not be necessary in a single family residence. (Id.) Defendant further points to the two electric boxes on the first floor wall inside the property as indicia of a multiple unit residence.

According to Defendant, the three electric meters were "easily visible from the rear alleyway." (Id. at 4.) Ms. Andrews testified that there are three utility meters on the rear exterior of the property, accessible through a common alleyway. (Doc. No. 55 at 3; Doc. No. 59 at 3-8.)

b. The Government's Arguments

To refute Defendant's arguments, the Government contends that the agents had no reason to know that the building was being used as a multiple unit dwelling given their extensive surveillance of the property. Therefore, the search warrant was valid when issued and executed. (Doc. Nos. 37, 56.) The Government asserts that the agents never observed anyone other than Defendant and Ms. Robinson at the property. (Doc. No. 56 at 5.) The Government argues that it is therefore irrelevant that there were three unlabeled doorbells, and that the property was zoned as a multiple unit dwelling, because it was in fact being used as a single-unit dwelling on June 17, 2014. (Id.) According to the Government, reasonable officers would believe the residence was a single-family residence occupied by family members who do not share expenses as with

---

These three pages contain substantial abbreviations, and there is no explanation as to its source or how these pages should be read.

multi-family occupancy. (Id. at 5-6.) Moreover, "having a defense investigator set out to prove an alleged fact . . . is a far different task than that faced by Agent Wescoe when applying for the warrant, who obviously did not, and could not, gain access to the property to investigate the internal layout before drafting the affidavit." (Id. at 9.) Further, even if 4311 Westminster Avenue was listed as a multiple unit dwelling in the public records, "the facts on the ground clearly showed that by the time the agents surveilled the property and executed the search warrant it was no longer being used as a multi-unit dwelling." (Id. at 10.)

The Government asserts that the agents never observed multiple doorbells, mailboxes, or meters during their surveillance. (Doc. No. 37 at 10.) The doorbells were not labeled. (Doc. No. 56 at 6-7.) The utility meters were located in the rear of the property, and could only be accessed by walking on the curtilage of the property, which would have risked drawing suspicion from Defendant. (Id. at 7.) Internal features of the property also could not be observed from the street. (Id.)

The Government relies on the fact that Ms. Andrews owned the property, and in fact admitted that the property was being used as a single-unit dwelling on the date of the search. (Id. at 9-10.) Even if the search warrant was overbroad, the agents limited the search to the second floor bedroom, which is the area where Defendant resided and for which the agents had probable cause to search. (Id. at 6.)

c. The Court's Findings

Based on the information before the agents, the search warrant was valid when issued. Defendant's arguments are not persuasive for the following reasons.

Initially, reference to the property records does not outweigh what the agents observed during their surveillance. The agents conducted surveillance at the property on at least seven

days, during which time they did not observe anyone other than Defendant and Ms. Robinson at the property. Additionally, records indicated that Defendant's mother owned the property, as opposed to an unrelated individual, which might indicate a landlord-tenant relationship. Moreover, five of the fifteen entries from the Accurint for Law Enforcement database search, which Defendant relies on, do not contain any apartment or floor reference, including the two entries for "Anthony Andrews," and another five entries contain "Apt" that is not followed by any number.[6] (Doc. No. 37, Ex. A.) Critically, Ms. Andrews admitted at the evidentiary hearing that there were, in fact, no other people residing at the property on the date of the search.

Furthermore, there is not external indicium that clearly indicates a triplex. The doorbells were not labeled in any manner, and did not contain any different names or apartment numbers. (Doc. No. 59 at 13, 14, 15.) The photograph introduced as Exhibit D-1 confirms that the doorbells were located on the doorjamb, which is part of the doorframe, perpendicular to the front door, and not facing the street. Exhibit D-1 further shows that there is one vertical white/beige doorbell, one vertical mounting piece without a doorbell, and two horizontal black, white and beige doorbells. The paint appears to be chipping on the house and the doorbells, making it difficult to distinguish the doorbells. Viewing the doorbells up close, one might conclude that there were multiple doorbells because some were not operable. Based on the foregoing description, there is substantial doubt as to whether the doorbells could be observed from the street, particularly from the distance that the agents viewed the property. (Doc. No. 56 at 6-7; Doc. No. 58 at 3-4.) Even if the doorbells could be observed, multiple unlabeled

[6] Additionally, four of the entries contain dates prior to the time Ms. Andrews owned the property. (Doc. No. 37 at 33-35; Doc. No. 59 at 4.) All other entries were for a time period ending in April 2014 or earlier. (Doc. No. 37 at 33-35.) Further, three entries are for individuals with the surname Andrews. (Id.)

doorbells do not automatically lead to the conclusion that there were three separate units and that they were occupied.

In addition, none of the internal indicia relied upon by Defendant can be observed from the street. The sign on the vestibule door is not visible from the street, and in fact may only be visible when leaving the property. (Doc. No. 59 at 17.) The second door is not even visible from the street, and it follows that one cannot see the sign on the second door ("keep this door closed at all times") or past the second door into the house either. As such, the indoor electric boxes cannot be seen from the street. (Id. at 18.) Likewise, the three boilers in the basement, and the separate kitchens and bathrooms in each unit cannot be observed from the street. As none of these elements can be viewed from the street, they do not affect the validity of the search warrant.

Similarly, the electric meters located in the rear of the property also were not visible from the street, and were only accessible via a narrow alleyway on the curtilage of the property. (Doc. No. 59 at 16, 29, 30.) A car could not travel down the alleyway because it was too narrow. Had the agents entered this area on foot to inspect the entire property, they risked exposure while they were conducting an investigation. (Doc. No. 56 at 7.)

Finally, there is only one mail slot in the front door at the property. (Doc. No. 59 at 15, 16, 31.) The mail slot is not marked with different names or apartment numbers. (Id.) There is only one front door to the property, along with a basement door. (Doc. No. 59 at 20.) As such, it was not clear to Agent Wescoe that the property was a multiple unit dwelling.

United States v. Busk, which Defendant relies upon, is distinguishable. 693 F.2d 28 (3d Cir. 1982). In that case, the officer knew that there were multiple units in the building, that at least one other individual resided at the property, and that the suspected gambling occurred in

only one apartment. Id. The officer believed the area to search was only the second floor apartment but specified that the entire property was to be searched. Id. There is no evidence in this case that the agents had knowledge of multiple units and nevertheless sought to search the entire property.

In United States v. Williams, officers executed a search warrant for a residence identified as a single family residence, when in fact the property was used as a rooming house. 917 F.2d 1088 (8th Cir. 1991). Williams argued, similar to Defendant here, that the warrant was invalid because it failed to specify the room to be searched. Williams argued that there were seven numbered doorbells next to the front door, there were numbers and deadbolt locks on the room doors, and the second floor could be closed off by a fire door at the top of the stairs. Id. at 1091. The government countered that the undercover officer who had been to the property on six occasions was never allowed past the front foyer and did not notice numbers on the doors or the doorbells. Id. The district court found the officers' testimony credible. It also found that the numbers on the door were "easily overlooked," the doorbells were difficult to see, and there was only one driveway, entrance, and mailbox. Id. The court upheld the search, concluding that nothing made it obvious to the officers that the warrant was overbroad. Similar reasoning applies here.

Accordingly, despite the information contained in the public records, the Court does not find that the agents knew or should have known that the property was being used as a multiple unit dwelling. Based on the information before the agents when they applied for the warrant – including but not limited to, the lack of other individuals at the property, the single mail slot, the fact that the property was owned by Defendant's mother, and the fact that the doorbells were not labeled or clearly visible – the search warrant was valid.

B. Execution of the Search Was Reasonable

Defendant next argues that the agents "should have discontinued the search as soon as they were put on notice of the risk that they might be erroneously searching a separate unit." (Doc. No. 55 at 5 (citing Garrison, 480 U.S. 79.) Defendant reasons that the agents must have observed the three doorbells, two front vestibule doors, and two electrical boxes. Because they did not terminate the search at that point, Defendant claims the continued search violated the Fourth Amendment. This argument is also unavailing.

In Garrison, officers obtained and executed a search warrant for Lawrence McWebb and "the premises known as 2036 Park Avenue third floor apartment." 480 U.S at 80. The officers reasonably believed that the third floor only contained one apartment, but during execution of the search, realized that there were two apartments – one occupied by McWebb and one occupied by Garrison. Id. Prior to this realization, the officers searched Garrison's apartment and found heroine, cash and drug paraphernalia. Id. Once they recognized that there were two apartments, they discontinued the search. Id. Garrison was charged based on the evidence collected, and he filed a motion to suppress. Id.

The Supreme Court set forth several principles in Garrison that should be used to determine whether the execution of a search warrant was lawful, "all of which focus on the conduct of a reasonable officer and the reasonableness of his belief as to whether the search at issue is proceeding beyond the four corners of the warrant." United States v. Ritter, 416 F.3d 256, 266 (3d Cir. 2005) (citing Garrison, 480 U.S. 79). These principles include:

> (1) First, if the officers had known, or should have known, that there were separate dwellings contained in the property . . . they would have been obligated to exclude those areas for which probable cause was not established from the scope of the requested warrant.

> (2) Second, mere entry into the building's common areas was reasonable and lawful because the officers carried a valid warrant authorizing entry upon the premises.
>
> (3) Third, once the officers knew or should have known of the error in what they encountered versus what was authorized by the warrant, they were obligated to either limit the search to those areas clearly covered by the warrant or to discontinue entirely their search. [Not limiting or discontinuing the search] does not necessarily, however, result in suppression of all physical evidence discovered during the course of the entire search. The officers' conduct and the limits of the search are based on the information available as the search proceeds. This principle, along with a recognition of the need to allow some latitude for honest mistakes that are made by officers in the dangerous and difficult process of making arrests and executing search warrants, is what must guide us in determining if and when the execution went awry.

Id. at 266-67 (internal citations omitted).

The Garrison Court held that the warrant was valid, entry into the third-floor common area was legal, and the search was reasonable because the "objective facts available to the officers at the time suggested no distinction between McWebb's apartment and the third-floor premises." Garrison, 480 U.S. at 86-88. In this case, the Court similarly finds that the agents' "failure to realize the overbreadth of the warrant was objectively understandable and reasonable." See id. at 88.

Here, upon entering the premises, the agents acted consistent with their belief that the dwelling was a single family residence and that it was not occupied by multiple residents. The agents conducted a protective sweep of the other floors of the dwelling, as they would in a search of a single family residence. (Doc. No. 37 at 18.) Opening the front door permitted access to every floor and room in the residence typical of a single family residence. (Id.) The second floor bedroom door "opened directly onto an open staircase typical of a single-family home." (Id.) The three unlabeled doorbells, two front doors, and two indoor electric boxes may have easily been overlooked or found insignificant. Exhibits D-2 and D-3 depict two relatively small

electric boxes on the wall in the narrow hallway parallel to the stairs leading to the second floor. Upon close inspection, there are dark grey doors on the two electric boxes. Barely visible, even from the close-up photograph identified as Exhibit D-3, is handwriting, perhaps written with a black marker, reading "2nd floor" on one of the boxes, and "3rd Floor APT" on the other. Also visible in Exhibit D-2, are what appear to be a broom, bicycle, and boxes in the narrow hallway, and an article of clothing draped on the stair banister.

There is no evidence that there were any labels, numbers, or names on the internal doors, or that any internal doors were locked. There was no signage in areas that the agents traversed indicating that the rooms in the residence were separate apartments. (Id.)

There were no other tenants residing at the property, so in effect, the property was being used as a single family residence on the date of the search. The agents here could not have come to the realization that they may have been "erroneously searching" other innocent individual's apartments, because there were no other individuals residing at the property. See Garrison, 480 U.S. at 87; Bedford, 519 F.2d at 654-55 (noting the purpose of the particularity requirement of the Warrant Clause is to "preclude a search of other units located in the building and occupied by innocent persons," and "[t]he standard . . . is one of practical accuracy rather than technical nicety.")

Moreover, the agents did limit the search to the area for which there was probable cause to search, which was the second floor bedroom where Defendant and Ms. Robinson resided. All evidence seized was found in the second floor rear bedroom. (Doc. No. 37 at 10.) For the foregoing reasons, the execution of the search warrant was reasonable.

C. The Good Faith Exception Would Apply

Although the Court need not reach this question, the agents acted in good faith, and the good faith exception to the exclusionary rule would apply. Even if a search and seizure are found to be in violation of the Fourth Amendment, it "does not necessarily mean that the exclusionary rule applies." Herring v. United States, 555 U.S. 135, 140 (2009). "Exclusion 'has always been our last resort, not our first impulse.'" Id. The "exclusionary rule is not an individual right and applies only where it results in appreciable deterrence." Id. at 141 (quoting United States v. Leon, 468 U.S. 897, 909 (1984)). "To trigger the exclusionary rule, police conduct must be sufficiently deliberate that exclusion can meaningfully deter it, and sufficiently culpable that such deterrence is worth the price paid by the justice system. . . [T]he exclusionary rule serves to deter deliberate, reckless, or grossly negligent conduct, or in some circumstances recurring or systemic negligence." Herring, 555 U.S. at 144.

The "test for whether the good faith exception applies is 'whether a reasonably well trained officer would have known that the search was illegal despite the magistrate's authorization.'" United States v. Hodge, 246 F.3d 301, 307 (3d Cir. 2001) (quoting United States v. Loy, 191 F.3d 360, 367 (3d Cir. 1999)). "The mere existence of a warrant typically suffices to prove that an officer conducted a search in good faith and justifies application of the good faith exception." Id. at 307-08 (citing Leon, 468 U.S. at 922; United States v. Williams, 3 F.3d 69, 74 (3d Cir. 1993)).

An officer's reliance on a warrant will be found reasonable unless one of the following situations apply:

(1) The magistrate judge issued the warrant in reliance on a deliberately or recklessly false affidavit;

(2) The magistrate judge abandoned his judicial role and failed to perform his neutral and detached function;

(3) The warrant was based on an affidavit "so lacking in indicia of probable cause as to render official belief in its existence entirely unreasonable"; or

(4) The warrant was so facially deficient that it failed to particularize the place to be searched or the things to be seized.

Hodge, 246 F.3d at 308 (citations omitted).

Here, there is no allegation that any of the first three situations apply. Instead, Defendant argues that the agents' reliance on the warrant was neither in good faith nor objectively reasonable, because it should have been clear that the property had three units. (Doc. No. 33 at 9-10.) For the reasons discussed above, the warrant and search were objectively reasonable. Further, Agent Wescoe's Affidavit in support of the search warrant contained twelve pages of investigational details supporting a finding of probable cause. (Doc. No. 37, Ex. A.) There is no indication, or even allegation, in this case that the officers engaged in deliberate, reckless, or grossly negligent conduct, or that the exclusionary rule would have any deterrent effect that would outweigh the social costs. As such, the agents' reliance on the search warrant was objectively reasonable, and the good faith exception would apply.

D. Defendant's Statements Will Not Be Suppressed

Defendant briefly argues that his statements should be suppressed as "fruit of the poisonous tree" stemming from the allegedly illegal search and arrest. During the hearing on August 3, 2015, defense counsel confirmed that Defendant's attack of the statements is limited to an argument based on "fruits of the poisonous tree." (Doc. No. 60 at 15.) For the reasons stated above, the search warrant and search were lawful. As such, Defendant's statements will not be excluded.

IV. CONCLUSION

Based upon the foregoing evidence and the applicable law, the Court finds that the search warrant for 4311 Westminster Avenue was valid, the search of 4311 Westminster Avenue was reasonable and lawful, and suppression of the evidence seized and statements made by Defendant is not warranted. Accordingly, the Court will deny Defendant's Motion to Suppress the Evidence and Statements.